THE CASE OF

STATE

vs.

SNYDER

—o—

UPHOLDING THE CONSTITUTIONALITY AND LEGALITY OF THE PURE FOOD AND DRUG LAW OF THE STATE OF LOUISIANA AND OF THE SANITARY CODE OF THE STATE OF LOUISIANA AS FORMULATED AND PROMULGATED BY THE LOUISIANA STATE BOARD OF HEALTH, BY AND UNDER AUTHORITY OF ARTICLES 296 AND 297 OF THE CONSTITUTION OF THE STATE OF LOUISIANA AND ACT 192 OF 1898, ACT 44 OF 1900, ACT 150 OF 1902, ACT 184 OF 1904 AND ACT 98 OF 1906.

—o—

PUBLISHED BY

Louisiana State Board of Health

1912

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PRINTED FOR THE INFORMATION AND GUIDANCE OF HEALTH OFFICERS AND OTHERS CHARGED WITH THE ENFORCEMENT OF THE HEALTH AND SANITARY LAWS AND FOR THE BENEFIT OF THE GENERAL PUBLIC.

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PREFACE.

The case of ***State vs. Snyder,*** in which was involved the constitutionality and legality of the Sanitary Code and of the Pure Food and Drug Law of the State was decided on June 4, 1912, by the Supreme Court of Louisiana. The contentions advanced by the Board of Health of the State of Louisiana were upheld and a rehearing has just been refused. This is the greatest judicial victory ever achieved by any health authority in this country, and the State Board of Health deems it imperative that Health Officers, Boards of Health, those otherwise charged with the enforcement of health, sanitary and hygienic laws, and the public generally, should know the issues involved in this case, what the contentions of the State Board were therein and the views taken of the controversy by the Criminal District Court for the Parish of Orleans and by the Supreme Court of the State of Louisiana.

The Board of Health of the State of Louisiana desires specially to call attention to the fact that every constitutional and legal objection which could possibly have been raised against the Sanitary Code and the Pure Food and Drug Law was pleaded and argued in ***State vs. Snyder.*** While the first case of the kind ever to reach the Supreme Court it was not a test case in the sense that there was any agreement between opposing counsel; the litigation was vigorously fought through three courts by the defendant's attorney and the attorney for the State Board of Health and every point that could have been made was strenuously stressed. The State Board of Health welcomed the judicial test of the laws. The culmination of this case is the result of more than three years of effort on the part of the Board's attorney to have

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some one of the numerous prosecutions which the Board has instituted and conducted, carried to the Supreme Court.

Despite the many criticisms of the Sanitary Code and the Pure Food and Drug Law which have emanated from time to time from persons whose interests were affected by these enactments and notwithstanding the sweeping opinions given by certain attorneys to the effect that the enactments were unconstitutional and illegal, it is most significant that the Board of Health of the State of Louisiana was victorious in all three courts before which the case of *State vs. Snyder* was tried; therefore, it may be safely asserted, the vindication of these laws has been sweeping and complete and the enactments stand now as the sanitary, health and hygienic laws of the State of Louisiana.

The Board of Health of the State of Louisiana wants the people of the State of Louisiana to know that the Sanitary Code and the Pure Food and Drug Law as held constitutional and legal in the case of *State vs. Snyder,* will be enforced throughout the whole State—in the large cities, such as New Orleans, Shreveport, Monroe, Baton Rouge, Alexandria, and Lake Charles, and with equal vigor and impartiality in the most isolated and remote rural districts.

The whole State of Louisiana must lend itself to the obedience of these sanitary and hygienic laws in order that the whole State may enjoy better health, pure food and drugs, and improved living conditions. The tour of the State by the Health Train, the numerous lectures given under the auspices of this Board, the constant campaign of education which the Board has maintained persistently during the past few years has, I believe, brought the people of every section of this commonwealth to the point where they realize

as they never did before the necessity for the observance of health regulations.

The decision in *State vs. Snyder* puts it within the power of the Board of Health of the State of Louisiana to demand and exact the enforcement of health laws and sanitary conditions.

As the Board desires a full and complete understanding on the part of those charged with maintaining and enforcing the Sanitary Code and Pure Food and Drug Law, and those affected thereby, of what was decided in *State vs. Snyder,* herein a printed the opinions and decrees of the Criminal District Court for the Parish of Orleans and the Supreme Court of Louisiana and the briefs filed by the attorney of the Board. A reading of the same will allow no room for misunderstanding or misapprehension.

OSCAR DOWLING, M. D.,
President Board of Health of the
State of Louisiana.

THE ISSUES INVOLVED

The Board of Health of the State of Louisiana believes that the issues involved in the case are fairly and impartially stated in the briefs filed by the Board's Counsel which here follow. Note that while additional authorities were filed in the Supreme Court the brief filed in the Criminal District Court was also used in the Supreme Court.

No. 19,418.

STATE OF LOUISIANA

versus

LARRY H. SNYDER.

In Re. Larry H. Snyder Applying for Writ of Certiorari, or Review.

Brief in Behalf of the State, and Filed by the Board of Health of the State of Louisiana.

May It Please The Court:

The defendant was convicted of violating Section 37 of the Pure Food and Drug Law of the State of Louisiana which reads:

> "The use of saccharin *in any food product* is prohibited."

He appealed from the Second City Criminal Court to the Criminal District Court and, after full argument and the submission of briefs, the conviction and sentence was affirmed by Judge Frank D. Chretien, lengthy written reasons being assigned by Judge Chretien.

This prosecution was begun and has been forwarded by the Board of Health of the State of Louisiana and the present attorney for the Board filed with Judge Chretien a brief which he believes effectually disposes of all of the defendant's contentions, particularly those aimed at the ***delegation*** of power to the Board by the Legislature and those directed against the ***method of publication*** imposed by the mandate of the Legislature on the Board in the promulgation of the Sanitary Code and Pure Food and Drug Law of Louisiana.

With the permission of this Court first obtained, counsel for the Board files herewith copies of the

brief heretofore filed in the Criminal District Court and counsel respectfully urges upon this Court that, in his belief, this brief covers the subject in all of its phases.

Counsel especially directs this Court's attention to Caption I of this brief (pages 3 to 11) filed in the District Court as disposing absolutely of the question of delegated power and as clearly resolving such into an exercise of ***administrative,*** or ***executive*** power as contradistinguished from ***legislative*** power.

Since the preparation for this Court of the copies of the brief filed in the Criminal District Court, counsel's attention has been called to several authorities not quoted in the Criminal District Court brief and counsel now takes this opportunity of presenting these authorities to this Court.

In the case of ***People ex rel. Lieberman vs. Vandecarr, 175 N. Y. 440 (People ex rel. Lieberman vs. Vandecarr, 81 App. Div. 128,*** affirmed) after stating the case, the Court said: (page 443.)

> "Provisions regulating the vending of food, in the interest of public health, have been a part of the statute law for a century, or more.
>
> "The Courts have regarded the principle involved as a proper and necessary municipal regulation.
>
> "In Metropolitan Board of Health vs. Heister, (37 N. Y. 661), where the act to establish a metropolitan sanitary district was held to be constitutional, the following language was used by the Court, after pointing out various acts from 1784 to 1866, enacted in the exercise of the police power for the protection of the public health:
>
> " 'These acts show that, from the earliest organization of the Government, the absolute control over persons and property, so far as the public health was concerned, was vested in boards or officers, who exercised a summary jurisdiction over the subject, and who were not bound to wait the slow course of the law; and that juries had never been used in this class of cases. The Governor, the Mayor, Health Officers, under various names, were the persons intrusted with the execution of this important function; and

they were always empowered to act in a summary manner. Scarcely a year passes, or did pass, prior to 1846, in which the Legislature did not charter some city or village, and give to the local powers full authority, by their own action and in their own way, to regulate, abate or remove all trades or manufactures that might be by them deemed injurious to the public health. I have examined the statutes from 1832 onward, and find that scarcely a year passes by in which these powers were not given to many cities or villages by original authority or by amendments to their charters.'

"That the Legislature in the exercise of its constitutional authority may legally confer on boards of health the power to enact sanitary ordinances, having the force of law within the districts over which their jurisdiction extends, is not an open question. This power has been repeatedly recognized and affirmed."

Polinsky vs. People, 73 N. Y. 65 (p. 69).

Health Department vs. Knoll, 70 N. Y. 530.

Counsel believes that it has been shown in the brief filed in the Criminal District Court (pp. 15-17), and attached hereto, that the provisions of Art. 42 of the Constitution, regarding promulgation, relates exclusively to laws "passed by the General Assembly." Even the Article of the Constitution itself carries an exception as regards a certain class of laws "passed by the General Assembly" and certainly the provision has no application to that large class of rules, ordinances and orders passed and issued by governmental agencies in the exercise of executive or administrative functions.

There may be various methods of making a law, an ordinance or an order known. The object—the only object—to be subserved is to put citizens on their guard, by making laws known. It is not pretended, and could not be successfuliy, or even reasonably, urged, that 'publication of such regulations as the Santary Code and Pure Food and Drug Law in the State journal' would be notice to any but a small portion of the citizens of the commonwealth of the action taken by the Board under the several

acts directing it to prepare a Sanitary Code and Pure Food and Drug Law.

The Legislature evidently debated the question and concluded, with good reason and sound judgment, that the most effective manner of making such sanitary rules and hygienic laws known was to have the Board print them in pamphlet form for *free* distribution among health officers, the public and those at interest. This was done by the Board. It is not pretended that it was not done.

In The Queen vs. The Justices of Huntingdon, L. R. 4, Q. B. D. 552, one W. B. Alexander was summoned before the Justices of Huntingdon charged with failing to comply with an order of the town council. It was objected by the accused that there had been no sufficient publication of the order he was charged with violating, and upon this objection being overruled, and a conviction following, a writ of certiorari was applied for to bring the conviction up and to quash:

> "Then, *although the Statute provides no specific mode of publication,* it can not be enough to show that there has been a casual publication by sticking up a few copies of the notice in some possibly obscure street in the borough."

The Court:

> Denman, J. "I am of the opinion that there is no pretense for this application. * * * Then as to the publication, it is not necessary that there should be notice to every individual in the borough."

The syllabus of this case reads:

> "In the *absence of any special provision for the mode of publication of the order,* it is enough to show that it has been posted up in five or six places within the borough."

In *Schweitzer vs. The City of Liberty, 82 Mo. 309 (p. 314),* it appears that the charter of the City of Liberty (Sec. 37, Missouri Acts of 1874, p. 339), provided that:

> "All ordinances passed by the City Council, within thirty days after they become laws, shall be published, * * * but the failure to publish, * * * shall not render void or affect the valid-

ity of any such ordinance, unless delay may cause such ordinance to act retrospectively on the rights of individuals."

Counsel cites the two cases immediately preceding to show that elsewhere, as in Louisiana, there is no particular method of promulgation for rules and regulations such as those being tested at bar ***and that such rules and regulations may be made known by any method deemed sufficient by the Legislature to accomplish the purpose desired: i. e., that of giving notice to the public.***

It is urged that the conviction of the accused be sustained.

Respectfully submitted,

BENJAMIN T. WALDO,

Attorney for Board of Health of the State of Louisiana,

STATE OF LOUISIANA

versus

L. H. SNYDER.

Appeal from Conviction of Defendant in Second City Criminal Court, Judge A. M. Aucoin.

BRIEF IN BEHALF OF STATE OF LOUISIANA
(Louisiana State Board of Health Prosecuting.)

THE FACTS.

The Constitution of Louisiana of the year 1898 Arts. 296 and 297) makes it mandatory upon the General Assembly to create "FOR THE STATE," a Board of Health and to "DEFINE THE DUTIES AND PRESCRIBE THE POWERS THEREOF"; and also to protect "THE PEOPLE AGAINST THE SALE OF INJURIOUS OR ADULTERATED DRUGS, FOOD AND DRINK AND AGAINST ANY AND ALL ADULTERATIONS OF THE GENERAL NECESSITIES OF LIFE OF WHATEVER NATURE AND CHARACTER."

By Act 192 of 1898 the Legislature undertook to carry out the above constitutional mandates; Sec. 1 of this Act creates the Board of Health of the State of Louisiana; Sec. 2, relates to certain of its officers and Sec. 3, gives to the Board "all powers, authority and jurisdiction now possessed by the (then) existing State Board of Health under the (then) present laws now in force"; except as changed by the (then) present act; and further provides that the Board SHALL prepare a Sanitary Code for the State and specifies what the scope of the Code shall be.

This Act 192 of 1898 has been ammended at every session of the Legislature but one, during the past fourteen years; we are presently concerned with but two of these amendments, namely those relative to promulgation and penalty.

Act 192 of 1898, as a cursory inspection will show, was originally most inartistically drafted; promulgation was to be by publication "in the official journal of the State *Capitol.*" The Legislature, however, in 1902 amended this section so as to provide that "on the adoption of said Code by the Board it shall be printed and published in pamphlet form with such number of copies as may be necessary for the distribution for the information of health bodies, health and sanitary officers and the public generally."

In 1906 (Act 98) the Legislature, "to further carry into effect Art. *297* of the Constitution of the State of Louisiana and to preserve public health," gave the State Board of Health power to revise the Sanitary Code provided for in Sec. 3 of Act 192 of 1898; and by this Act 98 of 1906 the Act 192 of 1898 was further amended BY THE LEGISLATURE FIXING THE PENALTY FOR VIOLATING THE PROVISIONS OF THE CODE.

For the convenience of the Court it is stated that the Santary Code and Pure Food and Drug Law is dealt with in Act 192 of 1898, Act 44 of 1900, Act 150 of 1902, Act 184 of 1904, and Act 98 of 1906; counsel has, he believes, given above the only provisions of these statutes affecting the case at bar.

It is not contended that there is any fault or omission as to the promulgation of these several acts of the Legislature and it is admitted that not only did the Board promulgate the Sanitary Code and the Pure Food and Drug Law ***as the Legislature directed this promulgation,*** but also that the Board went a step further and inserted advertisements in newspapers in Baton Rouge, Shreveport and New Orleans calling the attention of all concerned to the fact that the Board had complied with the legislative mandate, that the Sanitary Code and that the Pure Food and Drug Law had been prepared, and that it was ready for FREE distribution to all who applied for the same.

For a violation of the regulations made by the Board, as aforesaid, the defendant was charged, tried and convicted. From this conviction he has appealed. He relies on the special demurrer he has

filed. The FACTS upon which his conviction rests are too plain and too conclusively proven to admit discussion.

Counsel's theory of the case at bar differs materially from that so ably and forcibly advanced by the learned attorney for the accused. This theory counsel will proceed to elucidate to the Court under caption I of this brief before entering into a discussion of the law and the arguments submitted by opponent and which, it will be shown herein, do not apply under the circumstances of the present prosecution.

Counsel requests the further patient indulgence of the Court and begs the Court to believe that only the vast importance of the issue could induce him to inflict a brief of the prolixity which the present one is likely to assume.

I.

Counsel asks the Court to retrospect a moment upon the developments made in social, business and political life within the past twenty-five years. The multiplication of railways and water-craft has evolved out of a moribund germ the law of carriers; a few stagnant principles have been stirred and amplified into the laws of damages with all of their subdivisions and subtle distinctions; the old ideas in regard to interest and usury, factorage, brokerage and insurance, have been modified by the exigencies of a necessary commerce. But recently has civilization attained its present state of refined complexity, whose intricate elaboration of customs, usages and laws stands out against the simple, rude and ingenuous past as does some marvelous pattern of Gobelin tapestry contrast the clumsy wicker-work of a painted Celt.

And the law has met every step and advance made along social, political or economic lines; not with some makeshift framed to suit the expediency of the passing hour, but with a rule of action founded upon immutable principles; and counsel contends and will show that when in a case exactly similar to the one at bar the Supreme Court of Indiana said

that a Pure Food and Drug Law, framed with legislative sanction by a Board of Health, "is not legislation but merely the exercise of administrative power," the Indiana Court simply enunciated a principle as old, and as well founded, as any emanating from the exercise of the police power. It must be borne in mind that almost every act of man in his multitudinous relations with his fellows, society and the State, is affected, or controlled, or limited, by that indefinable *ignis fatuus*—the police power. It is ever present. It is ever expanding. Its limitations are ever elusive. The kaleidoscopic changes wrought by time and the advancement of scientific knowledge may easily and readily make not only valid but highly desirable to-day regulations which would a decade, a year, or a month ago have been deemed repugnant and reprobated as unconstitutional exercise of governmental powers. Further, the necessity, both physical and moral, which is ever present when these changes occur may make methods of dealing with new problems, arising under the police power, good and sufficient to-day which were undreamed of yesterday. For instance, the guarantee of the Magna Charta, stated in the Federal and in all of the State Constitutions, in the words "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures," has a limitation at the present time which did not attach to the guarantee in 1215 A. D., or in 1787 A. D.; and it will scarcely be contended seriously that a State (or the State through an agency, such as the State Board of Health) can not enter any house for the mere purpose of sanitary inspection, or seize and destroy any article deleterious to the public health; and it is not that the sacred principles of the law have changed (or been changed), it is merely that the shifting sands of time have wrought developments which the law has had to meet and deal with.

When the problems of government were less complex and when economic questions were few and unchanging there was little ***need*** for delegating the power of the State to governmental agencies, but when these problems and questions became many,

frequent and often demanded instant solution, it was found that the welfare of the State, as well as convenience, was best subserved by delegating to governmental agencies (such as municipalities, organized political subdivisions of the commonwealth, boards and commissions) the power to deal with certain localities or territory, or the power to deal with certain definite, specific subjects.

Nothing can better illustrate this growth of the delegation of administrative power to governmental agencies than the development of the regulation of common carriers by the State. Here is a subject once simple but now complex and ever changing. It would appear, too, that the question of hauling a certain amount of freight a determined distance, or the transportation of passengers a number of miles, could be easily regulated by a simple statute emanating from the legislative power; but, on further consideration, it will be observed that climatic, topographical and countless other considerations enter into the matter and that a haul of a hundred miles may be one matter in the eastern part of a State (not to mention the United States) and quite a different matter in the western part. Congress and the several State Legislatures early recognized the absolute futility of dealing with the question by direct legislative enactment and, going back to first principles, invoking the Civil Law of administration, delegated to boards and commissions the power to deal with the subject matter.

The railroad commission, for instance, carefully weighs every fact entering into the affair, views each angle of the situation and fixes the freight rate from one point to another upon cotton, grain or lumber at a certain number of cents per hundredweight. Is this not the most absolute control over the largest of America's vested interests? Again, the same body determines that a given train shall stop at a specified town; is not this approximating the management of the affairs of the railroad corporation by the State through a board? Both orders are enforceable civilly and their infractions are punishable criminally; yet who would contend, in this day and generation, that the making of these orders are any-

thing other than administrative acts, or that such acts are unconstitutional.

It must be remembered, also, in dealing with this illustration of delegated power, that the control exercised by railroad boards and commissions extends to the most minute detail of the railroad's dealings and relations with the public and the commonwealth —even down to the question of the location and construction of depots and other facilities.

> Railroad Commission cases 116 U. S. 307, 29 La. Ed. 636 (Counsel particularly directs the Court's attention to the opinion of Chief Justice Waite in Stone case, ib. 324; Judge John A. Campbell represented the Mobile & Ohio Railroad Co.); Minneapolis Eastern Railway Co. vs. Minnesota, 134 U. S. 467, 33 La. Ed. 985 (in this case rate fixing by commission upheld). This character of citation could be extended almost indefinitely.

In this State, under Act 240 of 1908 (as, indeed, is universally true as to such orders in almost all of the States) it is a misdemeanor "to disobey or violate any of the orders, rules or regulations of the Railroad Commission."

> See also M. L. & T. R. R. & S. S. Co. vs. R. R. Com. of La., 109 La. 247. (The Court in this case said: "The railroad commission IS AN ADMINISTRATIVE BOARD created by the State FOR CARRYING INTO EFFECT THE WILL OF THE STATE AS EXPRESSED BY ITS LEGISLATION. Its authority and duty are not limited to matters concerning public safety or health, but extend to matters concerning public comfort and convenience.") See also La. Ry. & N. Co. vs. Ry. Com. of La., 121 La. 848 (upholding right of Ry. Com. to order building of a depot). In La. State Board of Health vs. Standard Oil Co., 107 La. 713, a view much as in M. L. & T. R. R. & S. S. Co. vs. Ry. Com. was expressed. The Court said: "The functions for the discharge of which the State Board of Health is established are of vital consequence to the whole people of the State, affecting them in the matter of health and safety; and there is no

reason why a narrower rule of construction should be applied to the power of that board than to those of corporations of comparatively minor importance."

Hence we may take it to be a settled principle of law that the State and Federal boards and commissions to which are intrusted the control of common carriers PERFORM ADMINISTRATIVE AND NOT LEGISLATIVE ACTS when they make and promulgate rules and regulations governing ALL of the carriers' relations with the public and for the violation of which rules and regulations a precedent State or Federal statute provies a penalty of fine and imprisonment.

Allied closely and akin to health legislation is that begun in this State by Act 6 of the Extra Session of 1899, commonly known as the Sewerage and Water Board Act. This act provides that the Board "shall have further power to make reasonable rules and regulations for the use and consumption by such pay customers, and by such free consumers of water supply furnished them, and to prevent the "*obstruction of, interference with or damage to the pipes, mains and other appurtenances of the water system.*" The penalty *for violating these rules,* WHICH THE SEWERAGE AND WATER BOARD HAD (then) YET TO MAKE WAS FIXED AT A FINE OF $25 OR IMPRISONMENT FOR THIRTY DAYS, OR BOTH.

Now the Legislature could just as easily have said: "No one shall obstruct or interfere with, or damage any of the pipes, mains and other appurtenances of the water system under a penalty of $25 fine or thirty days' imprisonment, or both," but the Legislature in its wisdom and foresight knew that it was far safer and saner to entrust to the Sewerage and Water Board the making of appropriate rules and regulations because the organization and maintenance of the system was intrusted to that Board; it was charged and freighted with the responsibility of the undertaking; the special knowledge of the requirements was in the Board and, in consequence, the Board was better fitted to make these rules than the Legislature.

In 1908, under Act 270 of that year, the Legislature gave the Sewerage and Water Board the power, and made it the Board's duty, "BY PROPER ORDINANCES AND REGULATION BY IT" to require all inhabited premises in New Orleans to be connected with the water mains and TO FORCE THE PEOPLE OF NEW ORLEANS TO USE THE PUBLIC WATER SUPPLY IN LIEU OF CISTERNS; again the Legislature left to the Board the determination, "by proper ordinances and regulations by it," of the method through which this desired result was to be accomplished. These regulations and ordinances are merely administrative, just as the preparation of the Sanitary Code and the preparation of the Pure Food and Drug Law were administrative, and not legislative, on the part of the State Board of Health.

While never the subject of serious judicial test in this State, the delegation to school boards and trustees of various matters incident to school administration has been the prolific source of litigation elsewhere in the Union; almost every delegation of power being questioned upon the ground that it was an attempt to delegate to these boards and trustees the power of legislation. The jurisprudence upon the subject is, however, uniform, it being held that such acts are administrative and not legislative.

> Leeper vs. State, 103 Tenn. 500, 48 L. R. A. 167 (it was contended in this case that the statute was unconstitutional, in that it delegated legislative powers to the School Commission; the Court held that it conferred executive or administrative functions only); In re Chapman, 166 U. S. 41 La. Ed. 1154; Turner vs. Detroit, 104 Mich. 326.

In so far as the delegation of power to Boards of Health to determine certain facts or conditions upon which legislative statutes are to operate are concerned, the jurisprudence is uniform to the effect that the determination of such facts or conditions by Boards of Health do not constitute legislation by such boards, but are merely administrative or executive.

> Blue vs. Beach, 155 Ind. 121, 56 N. E. 89, 50

L. R. A. 64. (The Court held that the power granted to ADMINISTRATIVE boards, of the nature of boards of health, etc., to adopt rules, by-laws and regulations reasonably adapted to carry out the purpose or object for which they were created, is not an improper delegation of legislative authority). 4 Am. & Eng. Enc. Law 599. (The legislature may, in the exercise of its constitutional authority confer upon boards of health the power to enact rules and ordinances for the promotion of the public health and the abatement and prevention of nuisances, which shall have the force of law within the jurisdiction of the several boards; Citing: Slaughter House cases 16 Wall. 36; Livingston vs. Pippin, 31 Ala. 542; State vs. Tryon, 39 Conn. 183; Roberts vs. Ogle, 30 Ill. 459; Covington vs. East St. Louis, 78 Ill., 548; Des Moines Gas Co. vs. Des Moines, 44 Iowa 505; Harrison vs. Baltimore, 1 Gill (Md.) 264; Salem vs. Eastern Ry., 98 Mass. 431; Daigley vs. Boston, 100 Mass. 544; Wreford vs. People, 14 Mich. 41; Metcalf vs. St. Louis, 11 Mo. 102; St. Louis vs. Bofinger, 19 Mo. 13; State vs. Clark, 28 N. H. 176; McDermott vs. Board of Police, 25 Barb. 635; Gregory vs. New York, 40 N. Y. 273; People vs. B. of H., 71 Hun. 84; Met. Board vs. Heister, 37 N. Y. 661; Health Dept. vs. Knoll, 70 N. Y. 530; Polinski vs. People, 73 N. Y. 65.

"The Legislature of a State may delegate the power to determine some fact or state of things upon which a statute makes, or intends to make, or its own action depends." Elwell vs. Comstock, 9 Am. & Eng. Annotated cases 270. See Digest (1-10) page 180.

The above case cites State vs. Sullivan, 67 Minn. 379, 69 N. W. 1094. (The language of the Minnesota Court is: (p. 1095) "It is well settled that it is not always essential that a legislative act must in any event take effect as law after it leaves the hand of the legislature. If the law is, in its provisions, a complete statute in other respects when it leaves the legislature, its taking effect may be made conditional upon some subsequent event"; just as in the case at

bar the taking effect of the Act 192 of 1898, and amendments, was made conditional upon the drafting of the Sanitary Code and the Pure Food and Drug Law by the State Board of Health.)

Counsel believes that the theory and principle for which he contends is most clearly expressed in Isenhour vs. State, 62 N. E. 40. This was a Pure Food and Drug Law prosecution made under a Board of Health regulation which had been enacted under circumstances similar in almost all respects to those under which the Louisiana State Board of Health framed the Sanitary Code and the Pure Food and Drug Law. The Indiana constitution provided restrictions exactly similar to the Louisiana constitution and the Indiana Supreme Court said:

> "This class of legislation emanates from an exercise of the police power of the State for the protection of the public health. The power of the legislature and its right to determine for itself when an emergency for such legislation exists, and the means and instrumentalities necessary to accomplish the end in view, is no longer a doubtful question. The particular character of the subject (which was a Pure Food and Drug Law) embodying as it does consideration of sanitary science, is something to require for just legal control something more than legislative wisdom to accurately designate the subjects and instances to be affected. The classification of these subjects and the prescribing of rules by which they may be determined by a qualified agent, IS NOT LEGISLATION, BUT MERELY THE EXERCISE OF ADMINISTRATIVE POWER. ***The law itself is perfect and effective in all its parts.*** In respect to matters to be determined by the State Board of Health in its execution, it awaits the performance of these duties. When performed the law operates upon the things done by the Board, while unperformed, the law remains ready to be applied whenever the preliminary conditions exist."

Had this decision been written for the case at bar

the language could not have been made more appropriate.

> In Pierce vs. Doolittle, 106 N. W. 751; 6 L. R. A. (N. S.) 143, the Supreme Court of Iowa said: "A statute prescribing punishment for violation of a regulation of the State Board of Health is not unconstitutional on the theory that legislative power to create crimes is thereby delegated to the Board."
>
> In BRODBINE vs. REVERE, 182 Mass. 598; 66 N. E. 607, the Massachusetts Supreme Court said:
>
> "The validity of these statutes (a law passed by the Board of Health) which has long been recognized, stands upon one, or both, of two grounds: They may be considered as being within the principle permitting local self government as to such matters; the Board of Health being treated as properly representing the inhabitants in making regulations, which often are needed at short notice, and which could not be well made, in all kinds of cases, by the voters in town meeting assembled. Perhaps some of these statutes may also be justified constitutionally on the ground that the work of the Board of Health is only a determination of details in the nature of administration, which may be by a board appointed for that purpose; and that the substantive legislation is that part of the statute which prescribes a penalty for the disobedience of the rules which they make as agents performing executive and administrative duties."

Counsel submits that if this Court in its wisdom and discretion sees fit to follow the long line of jurisprudence holding that such enactments as the Sanitary Code and Pure Food and Drug Law are made in an administrative or executive capacity, then, in that event, every contention of opposing counsel fails and the conviction of the accused must stand. There are two great safeguards interposed by the law between the indiscriminate and improvident use of the powers vested in administrative boards and the people; they are:

First: The regulations enacted must be necessary;

and

Second: The regulations must be reasonable.

Neither the necessity nor the reasonableness of the regulations under which the accused was charged, tried and convicted are questioned, but these safeguards are always in the hands of the Court; an impassable barrier between an accused and oppression and injustice.

II.

Counsel for the accused overlooks the peculiar fact that under Act 192 of 1898 the Board of Health is given all of the powers delegated to previous Boards of Health (except those specifically withheld by that act), and that among the powers delegated was that to pass ordinances for the preservation of the health of the people and the sanitary condition of the State. Lying at the gateway of the tropics, it was early recognized by the law-making power that drastic measures were necessary to protect the inhabitants of this section, and the Legislature saw the wisdom and prudence of entrusting this important function to the State Board of Health and clothed that body with extraordinary powers with which to meet the conditions ever present. (See Act of 1855, Act 14 of 1870, and Act 80 of 1877.) All throughout its long and useful existence the State Board of Health has made ordinances and rules which it has enforced and has been upheld in the making and enforcing by the Courts. For instance, in 1901, acting under Act 37 of 1877, the Board attempted to enforce its rules relative to oil inspection against the Standard Oil Company and to collect from that corporation a charge, or fee, for inspecting oil. The power of the Board was vigorously resisted and the case was finally taken to the Supreme Court where it was held that the rules and ordinances of the Board were valid.

LOUISIANA STATE BOARD OF HEALTH vs. STANDARD OIL COMPANY, 107 La. 713. (Associate Justice Monroe said: "The rule of construction applicable to the charters of municipal corporations is equally applicable to the charter of the State Board of Health.

As to municipal corporations, it is well understood that they may exercise not only the powers expressly granted, but those necessarily or fairly implied in or incident to the powers expressly granted, and also those which are essential to the declared objects and purposes of the corporation.

"The functions for the discharge of which the State Board of Health is established are of vital consequence to the whole people of the State, affecting them in the manner of health and safety; and there is no reason why a narrower rule of construction should be applied to the power of that Board than to those of corporations of comparatively minor importance."

In another case, one in which the Board attempted to enforce its rules and ordinances relative to quarantine, these enactments, or rather what was done under them, was upheld by the Supreme Court.

COMPAGNIE FRANCAISE DE NAVIGATION A VAPEUR vs. STATE BOARD OF HEALTH, 51 A. 645, (on page 662-664 new ed.) Chief Justice Nicholls says: "The defendant Board is not an ordinary corporation. It is a 'body politic' with corporate powers. It is a governmental, public agency, representing the State in respect to the matters which which it stands intrusted."

Counsel has called attention to the above facts and decisions merely for the purpose of illustrating the well-known fact that ordinances and enactments by the State Board of Health are not new to our people and that when the Legislature of 1898, to carry into effect Articles 296 and 297 of the Constitution of that year, delegated to the Board, which it then constituted, the duty and function of preparing a Sanitary Code and Pure Food and Drug Law, the legislation came as in no sense an innovation or as a radical departure from the fixed and consistent policy of this State in dealing with all matters concerning the health, sanitation and hygiene of the commonwealth by and through the State Board of Health.

Counsel for the accused contends that Arts. 16, 17 and 21 of the Constitution of 1898 provides for the

separate and distinct organizations of the Legislative, Judicial and Executive Departments of our State Government; and as nearly as counsel can appreciate his contention, he argues that NO POWER of any of these departments MAY BE DELEGATED AT ALL.

In so far as the police power of a State is concerned, counsel states that the common, well settled and thoroughly established rule is as follows:

A STATE MAY DELEGATE ITS POLICE POWER, WHOLLY OR IN PART, TO ONE OR TO NUMEROUS GOVERNMENTAL AGENCIES; PROVIDED A STATE MAY NEVER IRREVOCABLY WHOLLY DELEGATE THIS POWER SO AS TO ENTIRELY DIVEST THE SAME FROM THE STATE. THAT IS, THE POLICE POWER OF THE STATE, WHETHER EXPRESSED, OR MANIFESTED, THROUGH THE LEGISLATIVE, JUDICIAL OR EXECUTIVE BRANCHES OF THE GOVERNMENT, IS ALWAYS SUPERIOR TO ANY DELEGATED POLICE POWER.

Counsel's contention was long since disposed of in this State by our Supreme Court, as an inspection of our jurisprudence will show.

> Art. 16 of the Const. of 1898 provides division of government of State into Legislative, Executive and Judicial. Same provision in Const. 1812 (Art. 1, Sec. 1); Const. 1845 (Title 1, Art. 1); Const. 1852 (Title 1, Art. 1.) Art. 17, Const. of 1898, provides for non-interference of any of above departments with the other. Same provision in Const. of 1812 (Art. 1, Sec. 2); Const. of 1845 (Title 1, Art. 2); Const. of 1852 (Title 1, Art. 2); Const. 1864 (Title 11, Art. 4; Const. of 1879 (Art. 15,) Art. 21 of 1898 provides that the legislative power of the State shall be vested in a General Assembly, consisting of a Senate and House of Representatives. Same provision in Const. of 1812 (Art. 2, Sec. 1); Const. of 1845 (Title 2, Art. 1); Const. of 1852 (Title 2, Art. 3); Const. of 1864 (Title 2, Art. 5); Const. 1879 (Art. 19).
>
> Hence, it will be seen that Articles 16, 17 and

21 of the present Constitution have always found place in the organic law of Louisiana. As far back as New Orleans vs. Morgan, 7 Martin N. S. 5, the Supreme Court held: "The Constitution, in distributing the executive, legislative and judicial powers, has reference to the State at large; and a law granting to corporations the exercise of subordinate legislation within a particular district over its members, and in regard to their rights and duties as corporators, and a law rendering a corporation judge of the validity of the election of its members, and prohibiting courts of justice from interfering, are not unconstitutional."

In HUNSICKER vs. BRISCOE, 12 A. 169, the argument of the appellant was: "All legislative power under the constitution of this State, is vested in the Senate and House of Representatives, and they have no power to delegate their authority to any other body, for, if the proposition be admitted that the legislature can delegate a part of its powers, the same proposition would hold good as to all powers conferred by the constitution. Police Juries are subordinate to the will of the legislature, and whenever they are sustained in the exercise of legislative privileges, they become co-ordinate departments of the government, and cease to be subordinate."

BUT THE SUPREME COURT TOOK A DIFFERENT VIEW. Chief Justice Merrick said: "The Legislature may constitutionally delegate to Police Juries authority to pass all such ordinances as they may deem necessary relative to roads and levees," and also that: "We do not understand by this Article of the Constitution that the General Assembly is required to legislate upon all subjects, whether of a general or local nature, and that it has no power to delegate any legislative authority to municipal and parochial authorities and other inferior jurisdictions. We think it was intended merely to define in what bodies the supreme legislative power should be vested. It was not intended as a restriction upon the sovereignty of these bodies."

Having seen that it is clearly settled that a State may delegate its authority to governmental agencies, it is only necessary to point out that in Standard Oil Company vs. Louisiana State Board of Health (107 Lo. 713, cited hereinbefore) the Supreme Court has held that the authority could be properly delegated to the Board and that that Board could make reasonable ordinances, or rules, to accomplish purposes intrusted to it through the exercise of this delegated legislative power.

"But," says counsel for the accused "in Indiana, from whence came the case of Isenhour vs. State, there was a specific act giving authority to the enactments of the Indiana State Board of Health.

> See Acts of 1899, State of Indiana, p. 189. "An Act forbidding the manufacture and sale or offering for sale any adulterated foods or drugs." This Act makes it an offense for one to have for sale any food adulterated with a substance injurious to health and EMPOWERS THE STATE BOARD OF HEALTH TO MAKE REGULATIONS AS TO THE MINIMUM STANDARD OF FOOD AND DRUGS.

What authority has the Board of Health of the State of Louisiana?

First: The Constitution of 1898, Articles 296 and 297, providing for the creation of a State Board of Health to take the place of the one created under the Constitution of 1879 and making it obligatory and mandatory upon the Legislature to provide for "PROTECTING THE PEOPLE AGAINST THE SALE OF INJURIOUS OR ADULTERATED DRUGS, FOODS AND DRINKS, AND AGAINST ANY AND ALL ADULTERATIONS OF THE GENERAL NECESSARIES OF LIFE OF WHATEVER KIND AND CHARACTER."

Second: The Act 192 of 1898 (and amendments) which says that the State Board of Health "shall prepare or cause to be prepared a Sanitary Code for the State of Louisiana, which shall contain and provide rules and regulations and ordinances of a general nature for the improvement and amelioration of the hygienic and sanitary condition of the State * * * and provide for it"—and here follows specific

and detailed injunctions as to what the Sanitary Code shall contain.

An amendment in 1902 changed the method of promulgation, and in 1906 (Act 98) the amendment allowing the revision of the Sanitary Code and the Pure Food and Drug Law was passed and it was also provided that the standard of purity and strengths for drugs, chemicals and medicines should be the United States Pharmacopoeia and National Formulary.

The Court will bear in mind that there is no question or doubt that all of these acts—of 1898, of 1900, of 1902, of 1904 and of 1906—were properly and regularly promulgated as provided for by the Constitution; and, hence, they were binding and valid to all persons. Did not this promulgation serve as all sufficient notice in law and in fact as to all things pertaining to these acts, and was it not perfectly competent for the Legislature to provide some method other than publication at Baton Rouge, in the official journal of the State, for the ***making known by the Board of Health*** of the regulations which that Board drafted under the mandate from the Legislature.

The Court will see from the acts in question that the matters with which the Board was to deal pertained to and affected certain definite interests as, for instance, the drug trade or, as in the case at bar, the manufacturer of "soft" drinks. Was it not perfectly reasonable in the Legislature to assume that which is a fact, i. e., if the Sanitary Code and the Pure Food and Drug Law were so published at Baton Rouge knowledge of their provisions would be very limited; but, on the other hand, it was easier, more preferable and certainly more practical for those at interest to be furnished free with copies of these regulations by the Board. This, counsel takes it, was the reasoning of the Legislature, and counsel does not think that there can be very much doubt that, reasoning in this manner, the Legislature had the constitutional power to order any method of promulgation, or publication, which the legislative judgment deemed sufficient.

There can be no doubt whatever that Article 42 of

the Constitution of 1898 applies exclusively to statutes enacted by the Legislature. It has no application to those laws made by governmental agencies such as municipalities, boards and political subdivisions. For instance, to hold that the Sanitary Code and the Pure Food and Drug Law had not been legally and properly promulgated it would also be necessary to hold that the Legislature IN RESPECT TO ENACTMENTS OTHER THAN STATE LAWS was without the authority to provide for any other method of promulgation than that laid down in Art. 42 of the Constitution of 1898; this would mean that the City of New Orleans, the City of Lake Charles, the City of Alexandria, would have to promulgate their ordinances by publishing them at Baton Rouge, and this is an absolute absurdity. And it would mean that every ordinance passed by the Police Juries of this State under Act 315 of 1908 was totally invalid and non-enforceable.

> "The promulgation of laws is an executive function whose mode, prescribed by the Legislature, differs in different countries and at different times; it is the extrinsic act giving a law, perfect in itself, executory force, and from whose date only the law, unless otherwise provided, is presumed executory," said Judge Spofford in State vs. Ellis (12 A. 392). "Promulgate. To publish; to announce officially; to make public as important or obligatory." Black's Law Dictionary.

Unless the Court held that there is no other way than that provided in Art. 42 of the Constitution to promulgate a law the Sanitary Code and Pure Food and Drug Law have been promulgated.

As the Court says in State vs. Ellis (above), promulgation has varied "in different countries and at different times," for in this State in early days promulgation was effected by the furnishing to the clerks of the District Courts copies of the law.

Touching the contention of the counsel for the accused relative to the prohibition of Art. 33 of the Constitution of 1898 against the adoption of a system or code of laws by reference, counsel would

suggest that nothing of the kind has been done by the State Board of Health.

There is apparently but one case on the subject in the State's jurisprudence: State vs. DeHart, 109 La. 570, and it does not apply fully to this case.

Neither the Legislature nor the board has adopted a code of laws. As was said in ISENHOUR vs. STATE: "The law itself is perfect and effective in all its parts. In respect to matters to be determined by the State Board of Health in its execution, it awaits the performance of these duties."

III.

Counsel for the accused has stressed to the Court, Ex Parte John Cox, 63 Cal. 21, WHICH WAS DECIDED THIRTY YEARS AGO. Counsel only desires to remark that this case is so obsolete and has been so often contradicted by decisions all over the United States that he is surprised at his learned opponent quoting it.

IV.

Counsel submits, in conclusion:

FIRST: That the framing of the Sanitary Code and the Pure Food and Drug Law was an administrative or executive function, and that if this Court so hold every contention of the accused must fall and his conviction stand;

SECOND: That if the Court hold that the framing of the Sanitary Code and the Pure Food and Drug Law was the exercise of a legislative function, then, even in this event, the conviction must stand, since under the Constitution and jurisprudence of the State the Legislature had the power to delegate such authority to the State Board of Health.

THIRD: That if the Board did exercise a legislative function, Art. 42 of the Constitution applies only to the promulgation of State statutes, and it was competent for the Legislature to fix some other method for the promulgation of the Sanitary Code and the Pure Food and Drug Law.

Respectfully submitted,

BENJAMIN T. WALDO,

Attorney for Louisiana State Board of Health

JUDGE F. D. CHRETIEN'S OPINION.

The case went on appeal from the Second City Criminal Court of New Orleans to the Criminal District Court for the Parish of Orleans and was argued at length orally and by brief before Judge Chretien in the latter Court. Judge Chretien gave full reasons for sustaining the contentions of the Board's attorney and Judge Chretien's opinion here follows:

STATE OF LOUISIANA.
CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS.
DIVISION B.
STATE OF LOUISIANA
versus
LARRY H. SNYDER.

REASONS FOR OVERRULING DEMURRER AND FOR AFFIRMING JUDGMENT OF LOWER COURT.

In September, 1911, an affidavit was filed by one J. A. Kane, charging Larry E. Snyder, on the 18th day of September, 1911, with having sold or caused to be sold, with the knowledge and intent that the same should be used as a beverage, or for human consumption, and with the knowledge that the same was sweetened with saccharin, and contained saccharin, to one Mrs. U. Nuss, a bottled drink, or beverage, known as "pop," or sarsaparilla jumbo, in violation of Regulation 37 of the Pure Food and Drug Law of Louisiana, as promulgated by the Louisiana State Board of Health under and by authority of Act 192 of 1898, contrary to the statute, etc.

Regulation 37 reads as follows:

"The use of saccharin in any food product is prohibited."

To this affidavit a demurrer was filed by defendant, alleging as matters of defense:

(1) "That the said affidavit and charge, and the matters therein contained, fail to set up any acts or things in violation of the criminal laws and statutes of this State."

(2) "That Acts 192 of 1898; 150 of 1902; 184 of 1904; and 98 of 1906, as well as the Sanitary Code thereunder, and all amendments thereto, as well as all amendments of the acts of the aforementioned acts of the Legislature, and all acts amended thereby are illegal and unconstitutional, for the following reasons, amongst others:

(a) "That the said acts and the Sanitary Code under which this proceeding is brought, violate and are contradictory of the provisions of Articles 16, 17 and 21 of the Constitution of this State passed and adopted in the year 1898, and that the Legislature is without power in law to delegate its law making power and authority to an individual or body of individuals, whether corporate or incorporate, so as to give the same power to designate and define and determine what are and what are not crimes and misdemeanors.

(b) "That the said acts and said Sanitary Code under which this proceeding is brought violate and are contradictory to the provisions of Article 33 of the Constitution of this State for the year 1898, which said article declares that no system or code of laws can be adopted by reference to such system or code of laws.

(c) "That said acts and said Sanitary Code under which this proceeding is brought violate and are contradictory to the provisions of Article 42 of the Constitution of this State for the year 1898, which provided for the promulgation of all laws before the same become effective; that the said Sanitary Code was never promulgated and even if constitutional, which is denied,

the same never having been promulgated as provided by law, said acts and said Sanitary Code never became a law, and is now not effective, and the defendant should not be held to answer to the charges made against him."

The first ground to be considered is whether by the legislative acts which will hereafter be enumerated, insofar as they apply to this case, the Legislature of the State conferred upon the State Board of Health any of its legislative powers.

Article 296 of the Constitution of 1898 provides:

"The General Assembly shall create for the State, and for each parish and municipality therein, Boards of Health, and shall define their duties, and prescribe the powers thereof. The State Board of Health shall be composed of representative physicians from the various sections of the State. Until otherwise provided by law, both the President and Secretary of the State Board of Health shall be ex-officio members of the Board of Health of the City of New Orleans, the President of the State Board of Health to be President of the local Board of Health of New Orleans."

Article 297 provides:

"The General Assembly shall provide for the interest of State medicine in all its departments; for the protection of the people from unqualified practitioners of medicine, and dentistry; protecting confidential communications made to medical men by their patients while under professional treatment; for the protection of the people against the sale of injurious or adulterated drugs, foods and drinks, and against any and all adulterations of the general necessaries of life of whatever kinds and character."

In furtherance of this mandate of the Constitution, the Legislature undertook by Act 192 of 1898, to carry out the above constitutional directions.

Section one creates the State Board of Health and provides who the members thereof shall be; fixes their qualifications and their pay, and the mileage and per diem.

Section two provides for the appointment of the

President of said Board, fixes his salary and his term of office; provides that at its first meeting said Board shall elect a suitable person, other than a member of the Board, to be secretary and treasurer, and fixes the salary of the said officer. It further determines the duties and powers of the president and secretary and treasurer.

Section three reads as follows:

"That said Board shall have all the powers, authority and jurisdiction now possessed by the existing State Board of Health under present laws now in force, except in so far as modified and changed by the provisions of this act. It shall have exclusive jurisdiction, control and authority over maritime quarantine within the State, as now provided by existing laws of the State. It shall have supervisory power over land quarantine, and over the care and control of infectious and contagious diseases within the State in order to accomplish the subsidence and suppression thereof, and to prevent the spread of the same. Such supervision and control shall be exercised in the manner and to the extent hereinafter laid down in this act. *It shall prepare or cause to be prepared a Sanitary Code for the State of Louisiana, which shall contain and provide rules and regulations and ordinances of a general nature for the improvement and amelioration of the hygienic and sanitary condition of the State.*. On the adoption of the said code by the Board, it shall be published at length and in full in at least one newspaper in the City of New Orleans, and in the official journal of the State Capitol, on ten successive and consecutive days, and shall also be printed and published in pamphlet form with such numbers of copies as may be necessary for the distribution for information of health bodies, health and sanitary officers and the public generally. When so printed said code shall cover and provide for, especially, land and maritime quarantine regulations; the reporting, care and management of cases of infectious and contagious diseases; it shall regulate the manner of keeping and reporting and

tabulating vital and mortuary statistics; it shall provide for affording facilities for vaccination, provided the same shall not be made compulsory, except of children attending the public schools; it shall regulate the carriage and transportation of persons, freight and dead bodies brought into the State or transported through or in the State in so far as the same may affect the public health. ***It shall provide for the carrying out of the laws of the State in regard to the adulteration of articles intended for human food or consumption;*** it shall provide for the inspection of meats, milk, coal oil and other articles affecting the public health and safety, where and when the same may be brought into one parish from another, or from outside of the State, leaving to the local boards hereinafter provided, the regulation of the sale or offering for sale of said articles within the parish or municipality to which the same may be brought, and the said code shall contain general rules in regard to such health, sanitary and hygienic subjects, as cannot in the opinion of the State Board of Health be efficiently and effectively regulated by local boards. * * *"

Sections 1, 3, 4 and 5 of Act 192 of 1898, creating the State Board of Health, were amended by Act 150 of the sessions of the Legislature of 1902, but the amendment to section three of said act alone need be considered in this case, and only that portion of it which applies to the Sanitary Code:

"It shall prepare, or cause to be prepared, a Sanitary Code for the State of Louisiana, which shall contain and provide rules, regulations and ordinances of a general nature for the improvement and amelioration of the hygienic and sanitary condition of the State. On the adoption of said code by the Board it shall be printed and published in pamphlet form with such numbers of copies as may be necessary for distribution for information of health bodies, health and sanitary officers and the public generally."

Under the provisions of Act 98 of 1906, the Legislature, in Section one of said act, provided:

"That the State Board of Health of the State of Louisiana, be, and is hereby authorized and empowered in order to further carry into effect Article 297 of the Constitution of 1898, to revise the sanitary code provided for by Section 3 of Act 192 of 1898, and to incorporate therein rules and regulations governing the manufacture, sale and inspection of foods, liquors, waters and drugs in the State in so far as the same may affect the public health; to fix standards of purity; to provide for the collection of samples and the entering of premises for this purpose; to provide for the establishment of a laboratory for the analysis of foods, liquors, drugs and water; to employ an analyst and assistants, and fix and pay their compensation; and to do all other acts as may be requisite and proper to carry this act into effect * * *"

Section 2. "Be it further enacted, etc., that the power to further revise and amend said Sanitary Code is hereby conferred on said State Board of Health for the State of Louisiana, provided that any revisions or amendments adopted by said Board, shall, before going into effect, be promulgated in the same manner as is required by existing law for the Sanitary Code."

Section three provides:

"That any person violating any of the provisions of said Sanitary Code, shall, on conviction by any court of competent jurisdiction, be fined not less than ten nor more than two hundred dollars for the first offense, nor less than twenty-five nor more than four hundred dollars for the second offense; nor less than fifty nor more than five hundred dollars, or imprisonment for not less than ten days nor more than six months, or both, in the discretion of the Court, for each subsequent offense."

Thus it will be seen that, in furtherance of the constitutional mandate above stated, the Legislature, in 1898, adopted an act creating the State Board of Health, providing for the qualifications of its members and defining the duties of said board.

Under the provisions of Section 3 of said Act, it

gives the Board the power to prepare or cause to be prepared a Sanitary Code for the State, which shall provide rules, regulations and ordinances of a general nature for the improvement and amelioration of the hygienic and sanitary condition of the State; it provided for the publication of said code, but omitted to provide any penalty for the disobedience of the rules, regulations and ordinances adopted by said Board.

By Act 150 of 1902, amendatory of said Act of 1898, the mode of publication and promulgation as provided in Act 98, was changed so as to allow the Board of Health to promulgate said code by publishing, or causing to be published in pamphlet form the code thus adopted by said Board, and provided for the manner of distributing the same.

As will be noticed in Act 192 of 1898, as well as Act 150 of 1902, no penalties were imposed for the violation of the rules, regulations and ordinances of said Board, or for the violation of said health code, and that Act 150 of 1904 provided penalties for the violation of any of the rules, regulations and ordinances of said Board.

An examination of these acts clearly demonstrates that as Legislative Acts they were properly promulgated under and in accordance with the rules and regulations of the Constitution providing for the promulgation of such acts.

The question then to be determined, on the first part of the demurrer, is whether the constitutional provision relating to the promulgation of acts applied with equal force to rules, regulations and ordinances, and Health Codes adopted by the Board of Health, and whether the Legislature by Act 192 of 1898, and acts amendatory thereof, delegated any legislative powers to the State Board of Health.

Article 42 of the Constitution reads as follows:

> "No law *passed* by the ***General Assembly,*** except the General Appropriation Act, or act appropriating money for the expenses of the General Assembly, shall take effect until promulgated. Laws shall be considered promulgated at the place where the State Journal is published, the day after the publication of such law in the

State Journal, and in all other parts of the State twenty days after such publication. The State Journal shall be published at the capital."

It will be noticed that this article of the Constitution deals with laws passed by the General Assembly.

In the case of Isenhour vs. State, from Indiana, reported in the 62nd North-Western Reporter, at page 40, the defendant was charged with having in his possession with intent to sell the same, one pint of milk adulterated with formaldehyde. A motion to quash was filed, because it was alleged that the act under which the prosecution was had violated the following provisions of the State Constitution of Indiana, viz.:

"First. Section 21, Article 1, which provides that 'no man's property shall be taken by law without just compensation.'"

"Second. Section 25, Article 1, which provides that 'no law shall be passed, the taking effect of which shall be made to depend upon any authority except as provided in the Constitution,'"

"Third. Section 19, Article 4, which provides that 'every act shall embrace but one subject and matters properly connected therewith; which subject shall be embraced in the title.'"

The motion to quash was overruled. After eliminating the first and third grounds of the motion, as having no application to the case, the Supreme Court of Indiana goes into a full analysis of the second ground, viz.: "That no law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in the Constitution."

The Legislature of Indiana adopted in 1899 at page 189 of said acts, what is known as the "Pure Food Law." In it certain duties are imposed on the State Board of Health in which the said Board is given powers, similar in nearly every respect to those given to the State Board of Health in this State; among them the duty of making a Pure Food Code.

The act provided for the punishment for the violations of its provisions, and that of the code as adopted by the Board of Health. The question in that case, as in this case, was that the ordinances, rules and regulations, and Health Code of the Board

of Health were adopted and made operative only after the passage of the act of 1899, and could not be covered by that act. That the delegation of power by the Legislature to the Board of Health was legislative, and was, therefore, beyond the power of that body to delegate to any other body; that the measures adopted by the Board for the enforcement of the act of 1899 were legislative, and as all legislative powers were, under the Constitution, vested in the State Legislature alone, that the act was unconstitutional and ineffective.

The Court, in passing upon these objections, used the following language, which, in my opinion, is conclusive of the controversy in the present case:

> "Does the act violate Section 25, Article 21, providing that 'no law shall be passed, the taking effect of which shall be made to depend upon any authority except as provided in the Constitution.' The Pure Food Law provides that 'within ninety days after the passage of this act the Board of Health shall adopt such measures as may be necessary to facilitate the enforcement thereof, and shall prepare rules and ordinances where and when necessary regulating minimum standards of foods and drugs, defining specific adulterations, and declaring the proper methods of collecting and examining drugs and articles of food.' From this provision it is argued that the law could not become effective and 'could not be violated until the State Board met, within ninety days, prepared its rules and passed its ordinances regulating minimum standards, defining adulterations, and declaring the methods of collecting and examining foods,' and, in substance, an attempted delegation of legislative power to the State Board of Health. The obvious purpose of the provision last quoted was to commit to a body of learned and scientific experts the duty of preparing such rules and prescribing such tests as may, from time to time, in the enforcement of the law, be found necessary in determining what combination of substances are injurious to health, and to what extent, if at all, admixtures or deteriorations of

foods and drugs may go without injuriously affecting the health of the consumer. That which is required of the State Board of Health has no semblance to legislation. It merely relates to a procedure in the law's execution for a reliable and uniform ascertainment of the subjects upon which the law is intended to operate. Nor does the duty imposed upon the State Board in any sense postpone the taking effect of the law until the duty is performed. Performance can never be said to be complete. The duty is continuing, and will arise at any time when a new food or drug is put forward. Besides, it is paradoxical to say that the law is not effective until the State Board has acted, when it is certain that without the law they could not act at all. And to say that their act puts the law in operation is to excuse them from acting, because no law requires it. This class of legislation emanates from an exercise of the police power of the State for the protection of the public health. The power of the Legislature, and its right to determine for itself when an emergency for such legislation exists, and the means and instrumentalities necessary to accomplish the end in view, is no longer a doubtful question. The particular character of the subject, embodying as it does considerations of sanitary science, is such as to require for just legal control something more than legislative wisdom to accurately designate the subjects and instances intended to be affected. The classification of these subjects, and the prescribing of rules by which they may be determined by a qualified agent, is not legislation, but merely the exercise of administrative power. The law itself is perfect and effective in all its parts. In respect to the matters to be determined by the State Board of Health in its execution it awaits the performance of these duties. When performed, the law operates upon the things done by the Board. While unperformed, the law remains ready to be applied whenever the preliminary condition exists. It is said in Blue vs. Beach, 155 Ind. 121, 36 N. E. 89, on page 130, 155

Ind., and page 92, 56 N. E.: "In order to secure and promote the public health, the State creates boards of health as an instrumentality or agency for that purpose, and invests them with the power to adopt ordinances, by-laws, rules and regulations necessary to secure the objects of their organization. While it is true that the character or nature of such boards is administrative only, still the powers conferred upon them by the Legislature, in view of the great public interest confided to them, have always received from the Courts a liberal construction, and the right of the Legislature to confer upon them the power to make reasonable rules, by-laws and regulations is generally recognized by the authorities." See, also, Overshiner vs. State, 156 Ind. 187, 59 N. E. 468, 51 L. R. A. 748; State vs. Board of Pharmacy, 155 Ind. 414, 58 N. E. 531; Groesch vs. State, 42 Ind. 547, 556; Railroad Co. vs. Geiger, 34 Ind. 185, 220."

In the case of Moses B. Polinski, plaintiff in error, vs. People of New York City, defendants in error; that was an indictment containing three counts.

The first count charged defendant with exposing for sale in the City of New York impure and unwholesome milk adulterated with water, against the form of the statute.

The second count charges that he kept and offered for sale milk in violation of the code and of the statute.

The third count charged him with bringing it into the City of New York for sale in violation of an ordinance of the Sanitary Code passed by the Board of Health of the City, February 23rd, 1876, and of which due public notice is alleged, and is set out in the count in full.

"By section one of chapter 467 of the Laws of New York of 1862, entitled an act to prevent the adulteration of milk, and to prevent the traffic in injurious and unwholesome milk, as amended by Section 1 of Chapter 545 of the laws of 1864, the knowingly selling or exposing for sale impure, adulterated or unwholesome milk is made a misdemeanor punishable by a fine of not less

than fifty dollars, and if the fine is not paid, by imprisonment for not less than thirty days in the penitentiary, or county jail, or until the fine is paid."

The statute is of general application throughout the State of New York.

The Board of Health of the City of New York, February 23rd, 1876, enacted an ordinance and made it part of the Sanitary Code, as follows:

"No milk which has been watered, adulterated, reduced or changed in any respect by the addition of water or other substance, or by removing of cream, shall be brought into the City of New York, nor shall any one keep or offer for sale any such milk."

The ordinance of the Board of Health was attacked on the ground that it was an unconstitutional delegation of legislative authority, and that the ordinance of the Board of Health of the City of New York was, for that reason, unconstitutional.

In passing upon the question, the Supreme Court of New York used the following language:

"That the Legislature in the exercise of its constitutional authority may lawfully confer on Boards of Health the power to pass sanitary ordinances within which their jurisdiction extends, is not an open question; this power has been repeatedly recognized and affirmed."

Quoting many authorities.

"An ordinance that is designed to prevent the sale of adulterated milk is manifestly within the scope of sanitary regulations."

In the case of Edward Leeper vs. State of Tennessee, 48 Lawyers' Reports Annotated, page 167, the following occurs:

"The defendant was convicted of violating the provisions of Act 1899, Chapter 205, commonly known as the uniform textbook act, and sentenced to pay a fine of ten dollars and costs, and has appealed."

"The caption of the act under which conviction is had thus expresses the object and subject matter of the law, to-wit: An act to authorize a Textbook Commission and to procure for use in

the public schools in this State a uniform system or series of textbooks; to define the duties and powers of said commission, etc., etc."

"Under the act a Board was accordingly created, and to it devolved the duty of selecting and adopting a uniform system or series of textbooks for use in the public schools of the State."

All necessary powers are given to the Board to determine what books shall be used in the schools, for the advertising for bids for the furnishing of books, authorizing the executive, as soon as the contracts have been entered into, to issue his proclamation announcing such fact to the people of the State, a depository to be designated by the commission, where a supply of books to meet the immediate demand shall be kept, etc., etc., and the law makes it a misdemeanor for any teacher to use, or permit to be used, in his or her school, any textbooks except those adopted by the commission, and fixes as a punishment for the same, a fine of not less than ten dollars nor more than fifty dollars.

To the affidavit made against the defendant a demurrer was filed, in which it is insisted that the act is unconstitutional, because:

(1) It allows a monopoly.
(2) It delegates legislative powers.
(3) It denies local self-government.

In passing upon the question, the Supreme Court used the following language:

"The next objection urged is that the act delegates legislative powers to the commission, and to the executive of the State. The main provisions of the act which bear upon the question are those which provide that the commission may select books, make contracts for obtaining them and perfect the details of the general plan in providing all schools with the books chosen, and obtain for the pupils and patrons the lowest price possible."

"If we grant that the Legislature has the power to prescribe and enforce the system, since it is one that requires the adjustment of many details, it is evident that such details can only be carried out by a commission. In such cases, the Legis-

lature can only act through Boards or Commissions or other agencies, and there can be no valid objection unless legislative power is conferred upon the Board. * * *"

"It (the State) does not delegate legislative power; that is, any power to pass or annul a law. There is a difference between the delegation of power to make laws involving, necessarily, a discretion as to what they shall be, and a grant of authority relating to their execution, though the latter may involve the exercise of discretion to, and in pursuance of the law. (6 Am. and Eng. Ency. of Law, second edition 1029).

"Merely administrative and executive functions may be delegated."

Cinn. W. & Z. R. Co. vs. Clinton County Commission, 1 Ohio State, 88.

"The difference between the power to pass a law and the power to adopt rules or regulations to carry into effect a law already passed is obvious."

Ga. R. R. Co. vs. Smith, 70 Ga. 694.

"The Legislature cannot delegate its power to make a law, but it can make a law to delegate the power to determine some facts or state of things upon which the law makes, or intends to make, its own action depend."

Locke's Appeal, 72 Pa. 498, 13 Am. Rep. 716.

In the case of Frank E. Blue vs. Fannie M. Beach; this was an action by the appellant Blue to enjoin Fannie M. Beach and Orville Connor, the former being a teacher, and the other superintendent of the Graded Public Schools in the City of Terre Haute from excluding his son Clay O. Blue from attending such school.

I gather from the decision the following facts: An act had been adopted by the Legislature of Indiana creating the State Board of Health; giving it practically the same powers as those given to the State Board of Health of this State under Act 192 of 1898; amongst others, to use such methods and means as was necessary to prevent the spreading of contagious diseases. It is shown by the case that small pox existed to a great extent in the City

of Terre Haute, and the Board of Health adopted a resolution prohibiting the receiving of pupils in the schools unless properly vaccinated. In obedience to this rule of the Board of Health the school teacher, Fannie M. Beach, and Orville Connor, Superintendent of the Graded Public Schools of the City of Terre Haute, refused to accept the son of the said Frank E. Blue into the school because he had not been properly vaccinated as required by the resolution of the Board of Health.

Blue then proceeded into court for the purpose of forcing the receiving his son.

"The contention of learned counsel," says the Judge, "is that each paragraph of the answer is bad and that the state of facts and the matters therein disclosed do not justify the appellees from excluding appellant's son from the public school. Their resistance may be said to embrace the following propositions":

(1) "The exclusion of any pupil from the public schools of this State when he is well and healthy, as the complaint discloses was the condition of Clay O. Blue, and where there has been no exposure to the infection of small pox, cannot be sustained merely because such pupil refuses to be vaccinated."

(2) "The rights of the appellant's son under the facts shown by the complaint to attend the public school in question is guaranteed by the Constitution, and the qualifications necessary to exercise this privilege are prescribed by statute, and as there is no statute providing that vaccination of a pupil shall become precedent to this condition, it is contended that the order of the Board of Health is without authority of law."

(3) "It is further insisted that the rules and by-laws, rules and regulations necessary to sedo not have the power of laws within their respective jurisdictions, and that the power of the State Board of Health to adopt by-laws and rules of the nature of rule eleven is legislative."

"Therefore, under Article 4, Section 1, of the State Constitution, whereby all legislative authority is lodged in the General Assembly, the

power to make such laws cannot be delegated by them to Boards of Health."

The Court, in passing upon the question, says:

"In order to secure and promote the public health, the State creates Boards of Health as instrumentalities or agencies for that purpose, and invests them with the power to adopt ordinances, by-laws, rules and regeulations necessary to secure the object of their organization. While it is true that the character and nature of such Board is administrative only, still the powers conferred upon them by the Legislature, in view of the great public interest confided to them, have always received from the Courts a liberal construction; and the right of the Legislature to confer upon them the power to make reasonable rules, by-laws and regulations, is generally recognized by the authorities." (Citing many authorities).

"When these Boards duly adopt rules or by-laws by virtue of the legislative authority, such rules and by-laws, within their respective jurisdictions, have the force and effect of a law of the Legislature, and like an ordinance or by-law of a municipal corporation, they may be said to be enforced by authority of the State." (Quoting many authorities.)

"It cannot be successfully asserted," says the Court, "that the power of Boards of Health to adopt rules or by-laws, subject to the provisions of the law by which they are created, and at harmony with other statutes in relation to the public health, in order that the 'outbreak and spread of contagious diseases' may be prevented, is an improper delegation of legislative authority, and a violation of Article 4 of Section 1 of the Constitution. It is true, beyond controversy, that the Legislative Department of the State wherein the Constitution had lodged all legislative authority will not be permitted to relieve itself of this power by the delegation thereof. It cannot confer upon any body or person the power to determine what the law shall be as that power is one that only the Legislature, under

the Constitution, is authorized to exercise; but this constitutional inhibition cannot properly be extended so as to prevent the grant of legislative authority to some administrative boards, or officials, involving the exercise of discretion or judgment, must be considered a delegation of legislative authority. While it is necessary that a law when it comes from the law-making power, should be complete, still there are many matters relating to matters of details which may be, by the Legislature, referred to some ministerial officer or body. All such matters fall within the domain of the right of the Legislature to authorize an administrative board or body to adopt ordinances, rules, by-laws and regulations in aid of the successful execution of some statutory provision."

"The Legislature cannot delegate its power to make a law, but it can make a law and delegate power to determine some fact or state of things upon which the law makes or intends its own action to depend."

"To deny this would be to stop the wheels of government."

"There are many things upon which a wise and useful legislature must depend, which cannot be known to the law-making power, and must therefore be subject to inquiry and determination outside of the halls of legislation. That the power granted to any administrative boards, of the nature of the Board of Health, etc., to adopt rules, by-laws and regulations reasonably adapted to carry out the purpose and object for which they were created is not an improper delegation of authority within the meaning of the constitutional inhibition in controversy, is no longer an open question and is settled by a long line of authorities." (Quoting many authorities.)

"It would seem that the power of the Board of Health of this State under the law relative thereto to make and adopt all reasonable by-laws, rules and regulations to carry out and effectuate the great public interest confided to them by the Legislature is so well affirmed by authorities

that we dismiss that feature of appellant's contention without further consideration."

"In the light of the firmly settled principle of law to which we have referred we may proceed to the facts to test thereby the acts of the appellees in excluding Clay O. Blue from school."

The same question, as cited in the case of Blue vs. Beach, was raised in the case of Leeper vs. State, and for reasons identical with those in the former case, the proceedings under the arrest made for a violation of the rules of the commission was maintained.

In the case of Pierce vs. Doolittle, quoted at page 751 of the 106 N. W. Rep., an Iowa case, the contention therein raised was similar to those raised in the present case by the appellant.

The case arose under the Iowa Health Code, section 2573, which provided that a person who knowingly fails, neglects or refuses to comply with and obey any order, rule or regulation of the State Board of Health shall be guilty of a misdemeanor, and punishable as provided for in Section 4906.

It was claimed that the power thus given to the Board of Health was unconstitutional because it was delegating legislative power to determine what acts should constitute a punishable offense.

The Supreme Court of Iowa, in passing upon the question, lays down the rule that the Legislature has the power to provide for the punishment of acts in resistance to and in violation of authority conferred by it upon the State Board of Health to adopt rules and regulations for the benefit of the public health. That such rules or ordinances are not legislative in their nature but administrative; that such rules, regulations and ordinances have the force and effect of a statute of the Legislature, and the opinion of the lower Court was affirmed.

Thus it becomes evident that the rules, regulations, ordinances and health code adopted by the Board of Health in pursuance of the authority vested in said Board by the acts of the Legislature of the State, are not, in the legal meaning of the law, legislative; but, that they are designed to carry into effect the necessary sanitary measures to promote public health. This being true, the powers to adopt and

enforce those rules, regulations, ordinances and health code are not delegated legislative powers, and the demurrer based upon such a contention must be overruled.

The next constitutional objection aimed at the legality of the acts in question has even less force. It is argued that the State Board of Health of this State, in adopting a health code, did so, in contravention of Article 33 of the Constitution of this State of 1898, which reads as follows:

> "The General Assembly shall never adopt any system or code of laws, but, in all cases shall recite at length the several provisions of the laws it may enact."

The health code adopted by the Board consist of rules, regulations and ordinances of said Board, for more compactness and convenience, and is in no sense the adoption of the code of laws.

The next and last objection is that the health code has never been promulgated as required by law, and that the said code is unconstitutional and ineffective because of the lack of promulgation, and if it ever was promulgated, that it never was promulgated in the manner and form as laid down by Article 42 of the Constitution of the State of 1898.

It has been shown that these rules, regulations, ordinances and health codes, are not legislative acts, but executive in their nature, intended solely to more effectively carry out the legislative intent. Article 42 of the Constitution provides for the promulgation of *State Laws* and not of mere rules, regulations, ordinances and health codes adopted by a corporation created by the State.

The promulgation of the rules, etc., etc., follow the act of their creation and are to be promulgated as directed by legislative authority. The acts giving life and power to the State Board of Health direct that the publication of the Health Code is to be made by having the same printed in pamphlet form, and in that form distributed. It is not claimed that this form of promulgation has not been followed; on the contrary, the evidence demonstrates that it has, and I therefore conclude that the rules, regulations, or-

dinances and Health Code of the State Board of Health has been promulgated in a legal manner.

ON THE MERITS.

An examination of the testimony in this case shows that "pop," as described in the affidavit, was sold by the defendant in the case; that it contained saccharin matter to an amount prohibited by Regulation 37 of the Revised Food and Drug Regulations of the Louisiana State Board of Health.

For the reasons above given the demurrer herein filed is overruled, and the judgment of the Lower Court is affirmed.

SUPREME COURT DECISION.

After Judge Chretien had upheld the constitutionality and legality of the Sanitary Code and Pure Food and Drug Law of Louisiana, the matter was taken to the Supreme Court of Louisiana upon application for writ of certiorari, or review. The writ was granted and after having held the matter under advisement for a month the following opinion and decree was handed down, Mr. Associate Justice Olivier O. Provosty being the organ of the Court.

SUPREME COURT OF THE STATE OF LOUISIANA.

No. 19,418.

STATE OF LOUISIANA

vs.

LARRY H. SNYDER.

In re Larry H. Snyder applying for writ of certiorari or review.

By the Associate Justice Olivier O. Provosty.

The Legislature having, by Act 98, page 164, of 1906, created a State Board of Health, and required to prepare and promulgate a sanitary code and made it a penal offense to violate any of the regulations thus to be made by the said Board, and the said Board having prepared and promulgated a sanitary code and one of the provisions of the said code being that,

"Sec. 37. The use of saccharin in any food product is prohibited."

The accused was prosecuted and convicted and sentenced for a violation of said provision.

He challenges the constitutionality of said provision on the ground that the Legislature could not validly delegate to the State Board of Health the power to declare and provide what conduct shall constitute a crime; that the power by which conduct otherwise innocent is made criminal, is legislative, and that legislative power for State purposes can be validly exercised only by the Legislature itself, cannot be constitutionally delegated to some subordinate functionary.

The contention would be well founded if it were not for Art. 296 of the Constitution, reading:

> "The General Assembly shall create for the State, and for each parish and municipality therein, Boards of Health, and shall define their duties, and prescribe the powers thereof."

Here the Legislature is authorized to "prescribe the powers" of the Board of Health. This can only mean to delegate to the Board of Health such powers as may be deemed to be necessary for efficiently carrying out the purposes for which a Board of Health is created, and the power most obviously necessary in such a case is that to make health regulations that shall have the force of laws. And nothing more than this has been done in the present case.

The accused also contends that the said sanitary code has never been promulgated. He does not deny that it was promulgated in a manner prescribed by the statute, by being printed in pamphlet form and widely distributed, and does not deny that this mode of promulgation would be sufficient in the absence of anything to the contrary in the Constitution, but contends that the Constitution requires statutes to be promulgated by publication in the official journal, and that if these regulations of the Board of Health are to have the force and effect of statutes they ought to be promulgated like statutes. In answer to this, it suffices to say that the provision of the Constitution thus invoked, Art. 42, has reference only to "laws passed by the General Assembly"; and that these regulations of the Board of Health are not "laws passed by the General Assembly."

The accused also contends that by thus making it a penal offense to violate any of the regulations

which the Board of Health may in the future adopt, the Legislature has practically adopted a system or code of laws in violation of Art. 33 of the Constitution, which provides that "the General Assembly shall never adopt any system or code of laws by general reference to such system or codes of laws; but in all cases shall recite at length the several provisions of the laws it may enact."

This article has no application to a case like the present, where the Legislature has not adopted a system or code of laws, but has made it a penal offense to violate whatever rules necessary for the conservation of the public health the Board of Health may make. The said article is not aimed at anything of that kind.

Judgment affirmed.

BRIEF ON RE-HEARING

The defendant asked for a rehearing after the foregoing decision had been rendered by the Supreme Court. The Board filed the following brief in reply to this application for rehearing:

No. 19,418.

SUPREME COURT OF LOUISIANA.

STATE OF LOUISIANA

vs.

LARRY H. SNYDER.

May it please Your Honors:

Counsel for the Board of Health of the State of Louisiana has read carefully the petition for rehearing and the brief thereon filed by the defendant, and counsel can find nothing there which was not urged and stressed in the Criminal District Court and bebore Your Honors heretofore, unless it be the statements made in the first three paragraphs of the brief of defendant.

The Board of Health of the State of Louisiana admits that there have been more than fifty infractions of the Sanitary Code and the Pure Food and Drug Law since this prosecution was instituted in the Second City Criminal Court. If counsel for the defendant errs he errs in the number of such infractions; there have been probably three or four hundred such infractions, but counsel for the Board fails to see what bearing this can have upon this case other than to accentuate the necessity for the regulations contained in the Pure Food and Drug Law and the Sanitary Code.

As to the suggestion that the Board is provided with an attorney, and the further suggestion that the Legislature is now in session in Baton Rouge, and the intimation that the attorney for the Board might go to the General Assembly and have the provisions

of the Sanitary Code and the Pure Food and Drug Law put into the shape of an act of the legislature, counsel for the Board can only reiterate the words of this Court in the present case, in the case of Board of Health vs. Standard Oil Company, in the case of M. L. & T. R. R. & S. S. Co. vs. Railway Commission, and the words of the Supreme Court of Indiana in Isenhour vs. State, to the effect that there are countless matters of executive and administrative detail which more properly belong, in their execution, to boards and other governmental bodies than to legislatures; for the very good reason among others, that they involve the determination of technical matters or scientific facts.

Counsel for the Board denies the suggestion contained in the third paragraph of counsel for defendant's brief. Defendant's counsel says: "The mere fact of expediency or necessity should not be considered by the Court in passing upon constitutional questions." The opinion and decree handed down herein on June 4, and of which Mr. Justice Provosty was the organ, was unanimous; and while "petitioner and other defendants are entitled to the benefits conferred upon them by the provision of the constitution," as counsel for defendant says, there was no denial of such right in the opinion and decree in this case.

Counsel for the Board desires to say that but for the paragraphs above referred to, he would not have imposed this present brief upon the Court. He embraced the opportunity, however, of reiterating to this Court what was said in the original brief herein; that is, that every single section of the Pure Food and Drug Law and every article of the Sanitary Code is subject to a test which absolutely disposes of the *argumentum ad hominem* made by opposing counsel. This test is: ***That every rule and ruling and every regulation made by the Board of Health of the State of Louisiana, or any other governmental agency, must be:***

1st: ***REASONABLE.***

2nd: ***NECESSARY.***

If this test is applied, as it must be, in the en-

forcement of the regulations made under legislative and constitutional mandate by the Board of Health of the State of Louisiana, it is an assurance that the humblest citizen of this State can suffer no injustice, and counsel suggests that this defendant is the last person to urge such an argument, since the offenses with which he was charged, and which the transcript shows was conclusively proven against him personally, was the use of a highly deleterious chemical in the preparation of a drink intended to be sold to the people of this State and which, from its very nature, appealed particularly to women and children.

Counsel submits that the rehearing herein asked for should be denied.

Respectfully submitted,

BENJAMIN T. WALDO,
Counsel Board of Health of the
State of Louisiana.

June 18, 1912.

The rehearing asked for was refused on June 28th, 1912, and the decision of the Supreme Court in the case of State vs. Snyder, upholding the constitutionality and legality of the Pure Food and Drug Law of Louisiana and of the Sanitary Code of Louisiana, is now final and the Pure Food and Drug Law and the Sanitary Code are now the paramount sanitary and hygienic laws of Louisiana.

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